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Reasonable Accommodation Under the
ADA

Barbara A. Lee* Sheila D. Duston†
Susanne M. Bruyere‡

*Cornell University,

†Cornell University,

‡Cornell University, smb23@cornell.edu

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Reasonable Accommodation Under the ADA

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, SPHR, Director, Program on Employment and Disability, School of Industrial and Labor Relations – Extension Division, Cornell University. It was updated by Sheila D. Duston, an attorney/mediator practicing in the Washington, D.C. metropolitan area, in May 2000. The original brochure was written by Barbara A. Lee, Associate Professor, Institute of Management and Labor Relations, Rutgers University, New Brunswick, New Jersey.

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Cornell University currently serves as the Northeast Disability and Business Technical Assistance Center. Cornell is also conducting employment policy and practices research, examining private and federal sector employer responses to disability civil rights legislation. This research has been funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research (Grant #H133A70005) and the Presidential Task Force on Employment of Adults with Disabilities.

The full text of this brochure, and others in this series, can be found at: www.ilr.cornell.edu/ped/ada. Research reports relating to employment practices and policies on disability civil rights legislation, are available at: www.ilr.cornell.edu/ped/surveyresults.html.

For further information, contact the Program on Employment and Disability, Cornell University, 102 ILR Extension, Ithaca, New York 14853-3901; 607/255-2906 (Voice), 607/255-2891 (TDD), or 607/255-2763 (Fax).

More information is also available from the ADA Technical Assistance Program and Regional Disability and Business Technical Assistance Centers, (800) 949-4232 (voice/TTY), www.adata.org

What is Reasonable Accommodation?

The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodation for qualified individuals with disabilities who are employees or applicants for employment. Potential reasonable accommodations include making existing facilities accessible, job-restructuring, part-time or modified work schedules, assistive technology, providing aides or qualified interpreters, changing tests or policies, and reassignment to a vacant position. The reasonable accommodation obligation also extends to the benefits and privileges of employment, such as employer-sponsored training, services, and social functions. Generally, the individual with a disability must inform the employer that an accommodation is needed.

Although the ADA does not require employers to provide accommodations that pose an "undue hardship" (defined as significantly difficult or expensive), the experiences of employers around the nation demonstrates that many accommodations cost nothing, and few pose the "significant expense" that many employers fear. Studies conducted in 1986 and in 1992 showed that more than half of the accommodations made for employees with disabilities cost nothing, while another fifteen percent cost under \$500. Tax credits are available to businesses who remove architectural barriers, target jobs for individuals with disabilities, or provide assistive technology or interpreters to workers with disabilities.

Employers are required to provide reasonable accommodation for qualified individuals with a disability, who are defined by the ADA as individuals with a disability who satisfy the job-related requirements of the position held or desired, and who can perform the "essential functions" of such position, with or without reasonable accommodation. The employer identifies the job's essential functions; job descriptions prepared before an individual is interviewed or selected for a position are considered evidence of a job's essential functions. If the individual cannot perform an essential function, even with accommodation, the individual is not considered "a qualified individual with a disability" under the law.

The employer should confer with the employee regarding the type of accommodation that will enable the employee to perform the essential functions of the position. The requirements of the particular position and the employee's physical or mental limitations should be evaluated in order to determine one or more potential accommodations that will be effective.

If a reasonable accommodation poses an undue hardship, it need not be implemented. Undue hardship is evaluated by assessing various factors, including the nature and net cost of the accommodation, the overall financial resources

of the facility and the larger business entity, and the impact of the accommodation on the operation of the facility. Accommodations of a personal nature that are used both on and off the job (such as a guide dog for a visually-impaired employee, or a wheelchair) would not be the employer's responsibility.

The employer need not create a new job for the person with the disability, nor must the employer reallocate essential functions to another worker. An employer may be required to restructure a job by reallocating nonessential, marginal job functions. For example, the Postal Service refused to promote a hearing-impaired secretary because she could not answer the telephone. The court ordered the Postal Service to promote the individual, noting that several other secretaries were available to answer the telephone, and that simply because telephone answering was considered a low status assignment did not make it an essential function of the secretary's job.

Some courts and the EEOC have taken the position that where the work is performed is another policy that may have to be modified as a reasonable accommodation for certain jobs, so long as the accommodation is effective and does not pose an undue hardship. The EEOC has noted that certain jobs such as a food server or cashier can only be performed at a work site, while other jobs such as a telemarketer or proofreader could be done at home. The EEOC has stated that certain considerations are relevant to the determination of whether a job can be performed at home, including supervision and the need to work with certain equipment that cannot be replicated at home. The courts that have rejected working at home as a reasonable accommodation focus on evidence that personal contact, interaction and coordination are needed for a specific position.

Employers who fear that accommodating a worker with a disability will lower the morale of coworkers will not find this a helpful defense to an ADA charge. Nor will the concern that coworkers or customers will not wish to associate with an individual with a disability be an appropriate reason to deny such an individual employment.

Accommodating a Worker with a Disability

The accommodation process begins before the disabled worker is hired (or identified, if it is a current employee who becomes disabled after being hired). Written job descriptions prepared before advertising or interviewing applicants are evidence of whether particular job functions are essential, but other evidence, such as what previous or current holders of the job actually do, is also relevant. Job descriptions should be reviewed to ensure that they include the essential functions of each job, particularly with regard to physical requirements. Statements such as "all incumbents must perform all functions of the position," or

"there is no light duty in this department" are not determinative of whether a reasonable accommodation must be provided.

Recruiters or interviewers must be trained regarding what inquiries, which are permissible under the ADA. Under the ADA, an employer may not ask about the existence, nature, or severity of a disability and may not conduct medical examinations until after it makes a conditional job offer to the applicant. This prohibition ensures that the applicant's hidden disability is not considered prior to the assessment of the applicant's non-medical qualifications.

At this pre-offer stage, employers may ask about an applicant's ability to perform specific job-related functions. An employer generally may not ask an applicant whether s/he needs a reasonable accommodation for the job during the hiring process prior to a conditional offer being made, except when the employer knows that an applicant has a disability -- either because it is obvious or because the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will need a reasonable accommodation to perform specific job functions. If the applicant replies that s/he does, the employer may inquire as to what type of accommodation is needed. An employer also may ask other questions that are not disability-related and may require examinations that are not medical.

After a conditional offer of employment is made, an employer may require a medical examination or make disability-related inquiries if all entering employees are subject to the exam or inquiry. An employer also may inquire whether applicants will need reasonable accommodation related to anything connected to the job, including access to benefits and privileges of employment, as long as all entering employees in the same job category are asked this question. Alternatively, an employer may ask a specific applicant if s/he needs a reasonable accommodation if the employer knows that this applicant has a disability -- either because it is obvious or because the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will need a reasonable accommodation. If the applicant replies that s/he does, the employer may ask what type of accommodation is needed.

If an examination or inquiry screens out an individual because of disability, the exclusionary criterion must be job-related and consistent with business necessity. The employer also must show that the criterion cannot be satisfied and the essential functions cannot be performed with reasonable accommodation. Employers are also permitted to conduct medical examinations and make disability-related inquiries of employees if such exams or inquiries are job-related and consistent with business necessity.

The employer must keep any medical information obtained confidential. This means that the employer must collect and maintain the information on separate forms and in separate medical files. The employer may disclose the information only to persons and entities specified in the ADA.

Employers may use any kind of test to determine job qualifications. However, qualification standards, tests or other selection criteria that screen out an individual with a disability or a class of individuals with disabilities will violate the ADA unless shown to be job-related and consistent with business necessity. Even if this showing can be made, an employer must consider whether the criteria can be met, or job performance accomplished with the provision of reasonable accommodation. In addition, tests must be administered to an applicant or employee with a disability in a way that ensures that the test results accurately reflect the skills, aptitude, or whatever other factor is being tested, rather than reflecting the impaired sensory, manual or speaking skills of the person, unless these skills are what is being tested.

Reasonable Accommodation and Safety

Some employers are concerned that a worker with a disability could be a safety hazard, either to herself or to co-workers or customers. The law takes this concern into account, but only if it is founded upon clear, documented evidence that the individual is a “direct threat” to herself or others because of the nature of the job and the specific characteristics of that individual’s disability.

In determining whether an individual with a disability poses a direct threat, including an individual with a contagious disease, the factors to be considered include:

- 1) the duration of the risk;
- 2) the nature and severity of the potential harm;
- 3) the likelihood that the potential harm will occur; and
- 4) the imminence of the potential harm.

Even if the person is found to pose a significant risk of substantial harm, part of the reasonable accommodation determination is an analysis of whether the individual can be accommodated in a way that eliminates the direct threat or reduces it to an acceptable level.

In general, blanket exclusions of particular conditions are difficult to justify, especially if the employer does not perform an individualized assessment of the individual being excluded. There have been court decisions striking down blanket exclusions of individuals with diabetes in both the law enforcement and truck driver context. However, in another case, a court found that a diabetic police recruit posed a direct threat because he had suffered two episodes where he became dysfunctional and disoriented while on

duty. Another court found that a bus driver's diabetes, severe heart condition, and hypertension made him a direct threat.

In contrast, a school van driver with a hearing impairment was found not to pose a direct threat. The court noted, after doing an individualized assessment, that there was no evidence that the driver had any problems driving the van, no evidence of prior accidents or close calls, and no evidence that she was ever distracted from her duties because of her impairment. In another case involving an epileptic shoe salesman, a court noted that even if the salesman posed a danger because of the risk of epileptic seizures, there were reasonable accommodations available, such as removing stock from high shelves so that the salesman would not have to climb ladders, which would eliminate the direct threat. In general, the key here is to obtain individualized medical information about the limitations that are posed by the worker’s disability and the probable harm that this individual’s specific physical or psychological problems will pose for the position in question.

Reasonable Accommodation and Worker Misconduct

The ADA protects individuals with mental as well as physical disabilities, and the reasonable accommodation requirement applies in the same way for both kinds of disabilities. However, employers may hold individuals with disabilities to the same performance and conduct standards as other workers; if the worker engages in misconduct that warrants discipline under the employer’s policy, even if the conduct is related to the individual’s disability, the employer may discipline the worker.

If an employee requests accommodation prior to engaging in misconduct, e.g., leave to attend therapy sessions, the accommodation must be provided unless it would impose an undue hardship. On the other hand, if the employee engages in misconduct prior to requesting the accommodation, the employer may impose the appropriate discipline. This may include discharge, depending on the employer's discipline policy and the nature of the misconduct involved. If the employer has a policy of progressive discipline, the employer may impose discipline short of discharge and then provide an accommodation that would enable the employee to meet the conduct standards. Off-duty misconduct may also be grounds for discharge or discipline, even if the worker asserts that the disability “caused” the misconduct. In most cases that have reached the courts, the misconduct was related to alcohol or drug abuse, and the employer was able to demonstrate that being required to retain the individual would be an undue hardship, because the job itself required the individual to demonstrate good judgment or to be law-abiding (such as a police officer or an FBI agent).

Employees whose excessive absences or tardiness create problems for the employer are not necessarily protected even if the attendance problems are related to the disability. However, the employer must consider whether a reasonable accommodation (such as a different work schedule, additional paid or unpaid time off, or working at home) is possible and whether such an accommodation would constitute an undue hardship.

Employers should train their staff about the general requirements of the ADA, with particular emphasis on defining the essential functions of each position and the accommodation requirement. Learning to assess the individual first, and the disability second, working with the individual and his or her counselor, medical professional, or other knowledgeable persons in fashioning the appropriate accommodation, and responding to requests to review the effectiveness of the accommodation will very likely satisfy the demands of the ADA, the practical needs of the individual with a disability, and the employer's need for a productive and committed workforce.

Resources

ADA Regional Disability and Business Technical Assistance Center Hotline,
(800) 949-4232 (voice/TDD).

Job Accommodation Network,
918 Chestnut Ridge Road, Suite 1,
Morgantown, WV 26506-6080,
(800) ADA-WORK (voice/TDD).

U.S. Equal Employment Opportunity Commission, 1801 L Street, NW,
Washington, DC 20507, (800) 669-4000 (voice), (800) 800-3302 (TDD),
or (800) 666-EEOC (publications).

Disclaimer

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Cornell University is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). However, you should be aware that NIDRR is not responsible for enforcement of the ADA. The information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

The Equal Employment Opportunity Commission has issued enforcement guidance which provides additional clarification of various elements of the Title I provisions under the ADA. Copies of the guidance documents are available for viewing and downloading from the EEOC web site at: <http://www.eeoc.gov>